

**MEETING**

The regular meeting of the Hayward Planning Commission was called to order at 7:30 p.m. by Chairperson Zermeño, followed by the Pledge of Allegiance.

ROLL CALL

Present: COMMISSIONERS Bogue, McKillop, Sacks, Fraas, Thnay
CHAIRPERSON Zermeño
Absent: COMMISSIONER One Vacancy

Staff Members Present: Anderly, Conneely, Emura, Looney, Patenaude, Pearson

General Public Present: Approximately 10

PUBLIC COMMENT

There were no public comments.

AGENDA

1. Variance No. PL-2004-0073 – Aaron & Denise Larson (Applicant/Owner) – Request to Retain an 8-Foot Fence Along The Side and Rear Property Lines Where a Maximum of 6 Feet is Permitted – The Project is Located at 24099 Malibu Road (Continued from May 13, 2004)
2. Variance No. PL-2004-0079 – Signs Designs (Applicant) / Harman Management (Owner) – Request to Install Two Logo Signs on The Roof of an Existing Fast Food Restaurant (KFC) Where Roof Signs are Prohibited and Where The Height of The Signs Exceed 24" (48" Proposed) – The Project is Located at 1299 W. Tennyson Road, at The Corner of Patrick Avenue (Continued from May 13, 2004)

PUBLIC HEARINGS

1. Variance No. PL-2004-0073 – Aaron & Denise Larson (Applicant/Owner) – Request to Retain an 8-Foot Fence Along The Side and Rear Property Lines Where a Maximum of 6 Feet is Permitted – The Project is Located at 24099 Malibu Road (Continued from May 13, 2004)

Associate Planner Emura described the property. The applicant is concerned with security and privacy so they would like to retain the eight-foot fence, which they have constructed. He noted that there were no special circumstances regarding the property. Also, the applicant would be afforded a special privilege were the variance granted. As a result, staff

recommended denial of the variance. The applicant had been notified of the hearing but was not in attendance.

Commissioner Sacks asked about this being the second continuance.

Planning Manager Anderly said because it is a community preservation action and it has been continued twice, staff was requesting that the Commission hear and act on it.

Chairperson Zermeno asked about the ordinance itself and what the process would be to change it to a 7-foot requirement.

Planning Manager Anderly responded that a citizen would file an application for a text amendment. She noted that no one had applied to do that as of now.

Commissioner Thnay asked whether the process was different from applying for a 7-foot fence rather than 8-foot.

Planning Manager Anderly explained that someone could apply for a variance. In the hillside, there might be special circumstance. Or they can apply to amend the ordinance.

Chairperson Zermeno commented that this is at least the second time this issue so perhaps it is time to consider changing the ordinance.

The public hearing opened at 7:37 p.m.

Paige Bennett quoted the ordinance and said she was in support of a change in the ordinance. She brought examples of 8-foot fences in the City of Hayward. She maintained that the City of Hayward does a disservice to its residents by enforcing the 6-foot fence rule but allowing 8-foot fences under special circumstances. She has requested updating the law. She shared some statistical data regarding fencing in Hayward. She stated that within one mile from her home there are 26 fences above the 6-foot requirement. Given that, there are potentially hundreds of other violations. She also brought information from surrounding cities' fence ordinances and added that she has been advised that the City of Hayward will take her to court over her fence violation. She advocated changing the ordinance and supported this variance.

Commissioner Fraas asked whether she had considered approaching the change of ordinance by the process Planning Manager Anderly discussed.

Ms. Bennett said she did not know of that process but would talk to the Planning Manager tomorrow.

The public hearing closed at 7:45 p.m.

Commissioner Sacks moved, seconded by Commissioner Bogue to accept the staff recommendation and deny the variance.

**REGULAR MEETING OF THE PLANNING
COMMISSION, CITY OF HAYWARD**

Council Chambers

Thursday, May 27, 2004, 7:30 P.M.

777 "B" Street, Hayward, CA 94541

Commissioner Sacks said she agreed with the findings. There was no compelling reason to support this exception except for a desire to violate the rules. There is no reason to see this approved. She noted, however, that there is a mechanism for a change. It does not appear to her that there is a need for changing the rules.

Commissioner Fraas said she would definitely support the motion. When and if the Ordinance change were to come before the Commission, they could discuss it at that time.

Commissioner McKillop said she also would support the motion adding that she hopes Ms. Bennett takes up the issue. She said she wished she could feel more comfortable with this decision.

Commissioner Thnay said the current Ordinance is flawed. A 6-foot fence might have worked in previous era but today, there are zero lot line homes, decks are being built everywhere, and people are taller. Fences make good neighbors, and there is a time for privacy. He noted that Pleasanton allows 8-foot fences, and Fremont has the same option but 7-foot might be a good compromise. They should have an option. This item might not meet the variance requirement but the City should look at other cities to see what they are doing.

Commissioner Bogue also supported the motion. This applicant has no grounds in this place at this time for a higher fence. He argued that second stories eliminate privacy as well.

Chairperson Zermeno discussed his own home and his 6-foot fence. He agreed with Commissioner Thnay that the Ordinance needs to be revisited. There is a place for higher fences in some areas.

The motion carried by the following vote:

AYES:	COMMISSIONERS Sacks, Fraas, McKillop, Bogue
NOES:	COMMISSIONER Thnay
	CHAIRPERSON Zermeno
ABSENT:	One Vacancy
ABSTAIN:	None

2. Variance No. PL-2004-0079 - Signs Designs (Applicant) / Harman Management (Owner) - Request to Install Two Logo Signs on The Roof of an Existing Fast Food Restaurant (KFC) Where Roof Signs are Prohibited and Where The Height of The Signs Exceed 24" (48" Proposed) - The Project is Located at 1299 W. Tennyson Road, at The Corner of Patrick Avenue (Continued from May 13, 2004)

Associate Planner Pearson described the location as well as the other signs in the area. He noted the number of signs and the visibility of the location. He said that the City Sign Ordinance encourages lower, monument signs. He showed various other KFC's in the area. He

added that the variance would require special circumstances. In 1987, when the Council approved the building, a cupola sign was proposed and was rejected; saying the building itself and the two roof signs were adequate. After which, four directional signs and a monument sign were installed to further increase the visibility. As to the other signs in the area, they were either not roof signs or approved before 1984. Staff recommended denying the variance.

Chairperson Zermeno explained that he has a business close to this location but was deemed okay to hear it since his business is more than 500-feet away, and closer to Tampa. He asked what about the two small signs near the driveways and whether they would be affected by this.

Associate Planner Pearson explained that they are already oversized but not part of this variance request.

The public hearing opened at 7:57 p.m.

Andy Soares, Sign Designs, said looking at the location basic needs have to be addressed at this location. The first is visibility. The signs were updated in 1994. With all the tile work on the walls, there is no allowance for wall signs. He asked how do you identify this business. As the franchise changes, the needs and requirements change. The cupola tower is not being used any more. The image is changing. They were asking for 62 square feet of signs, which is the current signage on the site. They would like to reallocate the signs. Mount the logo signs flush to the wall and remove the roof signs. Another issue is the Ordinance, which limits a logo to 2-feet in height. With this logo, it would look ridiculous. They would like to maintain the image as much as possible. The Colonel logo is used to identify the store. They are proposing the reallocation of present square footage.

Chairperson Zermeno clarified that they would take away the present roof signs and replace them with tower signs.

Hazel Fong, Regional Director for the area, she said they were told by the corporation that they needed to upgrade and update all the restaurants. She explained that they came to the City of Hayward and gave them 6 options. Planner Pearson helped through the process. Once they got approval and were ready for construction, the Planning Manager said you cannot do this. They had spent over \$80,000 and two years following recommendations. They were left with the option of trying to get a variance. She suggested that staff should have more oversight and direction before allowing the project to get to this point. She added that she was with the owner/manager and suggested they would have to walk away from the whole remodel if the Variance is not approved. She noted that Union Landing is strong competition, and implied it was developed with the approval of this Planning Commission. She noted they are trying to brighten this restaurant up and be competitive since the company has been in this location 20 years.

Commissioner McKillop clarified that Union Landing is Union City and this is the City of Hayward. She asked how much of the \$80,000 development cost went to the sign issue.

Ms. Fong reiterated that without the signs the remodel is finished. The amount of cost went to the whole package of which the signage is a major part. She added that they would scrap the



entire remodel.

Commissioner Sacks noted that in the staff report was a discussion regarding trees, the replacement of missing trees and had they been allowed to grow, their obstruction of the proposed sign on the cupola. She asked whether this was considered and for comment from staff.

Associate Planner Pearson reported that some trees are still missing.

Planning Manager Anderly added that some of the replacement trees were palm trees, which are not allowed and were not approved for this site.

Commissioner Sacks asked again whether mature trees of the type required could obscure these brand new signs. She said she could say the business is there because of the signs.

Ms. Fong explained that she does not envision them being that tall. She added that just looking at the building you cannot tell what it is.

Commissioner Thnay asked whether the architectural improvements would include changes to the wall façade on Tennyson and possibly open the walls for people to see inside.

Ms. Fong said she would love to open it up and have windows. It is her understanding that this is a requirement of the City.

Planning Manager Anderly explained the building was approved in the Mission style. The part obscured is not the dining area. Hayward does not encourage franchise architecture.

Commissioner Fraas asked about the investment of \$80,000 in the renovation. She asked whether the bathrooms will be ADA accessible. She then asked staff whether the landscaping plan was followed.

Planning Manager explained that initially it might have been followed, but over time, replacement of trees did not consider the landscape plans. This might also be a mixture of excessive pruning and change of species.

Commission Bogue asked once again about the expenditure of the \$80,000 for the project.

Cathy Brady, construction coordinator for Harman Management, explained that this plan was completely approved by the Planning Department, and approved by the Building Department. All of which was then disapproved. The money was spent on architectural fees. She emphasized that they were not asking for more signage than allowed but asking for the sign on the cupola. This sign would be under the roofline, since there is a roof on the cupola. She noted the three variance requirements. She did a sign survey. Newly approved restaurants have

over signage adding they need to keep up with the rest of the restaurants.

Stan Rogers said he has lived in Hayward since 1989 and is an area consultant for Harmon Enterprises. He noted that they have been doing business in the City of Hayward for a long time adding that they have done a lot for the community and hired a number of employees. Several go to CSUH. He lives near the Fairview area. Although, this restaurant is in a rough area, they would like to save it.

Rocky MoHammed, manager of this KFC, said he started as a chicken cook and moved up. He was asking for consideration of approval of the signs. He said they aren't asking for much.

Chairperson Zermeno said there seems to be someone who does not appreciate the activity in the parking lot.

Mr. MoHammed said they were talking about chains and camera. He said they have a rule for lights out at 12 p.m. for the neighbors.

Chris Primi, a neighbor, said he has no axe to grind with any of these folks. Bought a house around the corner. He said that late at night, as you drive past there is rampant activity of drugs and prostitution. He said the problem is there is no chain or lights so this activity takes place. Larger sign will increase the activity. He was asking them to help curb these other activities. Boom boxes in cars are extra loud. Jack-in the Box has a sign asking to quiet the sound. Also, patrons go through and toss their garbage out into the neighborhood. He suggested that they might be required to have someone go around in the immediate area and pick up the garbage.

Commissioner Fraas asked whether he had talked to the owner about the problems.

Mr. Primi said the owner seemed to agree with these things.

Commissioner McKillop asked staff whether the conditions of approval did address for cleanliness and noise.

Planning Manager Anderly noted that the permit was granted in 1984 but it is quite probable that these things were included. As to the access to the parking lot after hours, Jack in the Box needed to do this, closing it off might be a solution.

Commissioner Thnay suggested that low-level lighting could be a deterrent to prevent illegal activities on the property. If they were to provide these things, it could be a win, win for the neighbors.

The public hearing closed at 8:32 p.m.

Commissioner Thnay asked about the Sign Ordinance and the amount of wiggle room for the signs. He commented that his concern was that this area is a gateway area and he would hate to see this business becomes bankrupt. He would like to see whether there can be a compromise. Not sure if this is a sign problem but this could be enhanced. He wondered whether a clock



tower would be more acceptable rather than a sign.

Planning Manager Anderly said she could find out but did not think this was what they were looking for.

Commissioner Bogue suggested that they were shown elevations of a redesigned building and whether that design is under consideration or whether only the variance on the existing building is the issue.

Planning Manager Anderly said they trying to fit the sign onto the existing tower.

Commissioner McKillop asked should this redesign go into effect, could the Commission ask for additional conditions of approval.

Planning Manager Anderly suggested that they could attach anything reasonable and a nexus between the action they were taking with the sign and other conditions they would apply.

Commissioner Sacks said she was not ready to make a motion. She had some comments. She thought, looking at the building that there was no reason for signs. However, looking at it, she realized that the cupola might look better with the signs rather than bare. She said she was inclined in that direction. She added that she likes the side facing on Tennyson which is lovely.

Commissioner McKillop moved, seconded by Commissioner Thnay, to approve the variance for special with conditions, including lights around the parking lot but not intrusive; chains in the parking lot; sign requesting that patrons reduce the volume of cars; surveillance cameras as well, picking up litter and garbage.

Planning Manager asked for clarification, suggest bring back conditions and findings, and that the chains and lights be attractive.

Commissioner Fraas added that she actually thinks it is an advantage for the building not to look like a fast food restaurant. So she would support the motion.

Commissioner Bogue suggested chains would be acceptable but should be marked and flagged. He noted that camera surveillance should be 24-hours a day.

Commissioner Thnay said staff is competent. There is one chance in a million that this would happen. He agreed with Commissioner Sacks that the cupola is missing something. He hopes this variance would enhance the area. He would not like to see this area deteriorate further.

Commissioner Sacks said, if we are wrong, we are going to pay for it. So she hopes they are right.

Commissioner Bogue asked about the landscaping plan and that the standard conditions be part of the motion.

Planning Manager Anderly said she will check with the original use permit but those in place today are no more onerous than the older ones would be.

Chairperson Zermeno said he would also support the motion. Thanked the neighbor, in particular, for coming to the meeting and expressing his comments.

The motion passed unanimously.

Planning Manager Anderly said the findings and conditions will be coming back to the Commission in two weeks.

ADDITIONAL MATTERS

3. Oral Report on Planning and Zoning Matters

Planning Manager Anderly noted the three up-coming meetings in June.

4. Commissioners' Announcements, Referrals

Commissioner Thnay suggested that others might check out the City of Hayward's GIS. He also recommended other informative websites: Keyhole.com which has the availability to look at the City Of Hayward in 3-D, and MTC's website 511.org. He noted that the latter contains a lot of useful information.

Chairperson Zermeno commented that he was pleased to see the various projects in process around the City. He also wished a Happy Birthday to Barbara Sacks.

Commissioner Sacks thanked Chairperson Zermeno noting that it was a very special weekend for her. She was celebrating her birthday this day and would be retiring from her job the next. She also thanked Planning Manager Anderly for a beautiful bouquet of flowers.

APPROVAL OF MINUTES

– May 13, 2004 approved

ADJOURNMENT

The meeting was adjourned by Chairperson Zermeno at 8:50

APPROVED:

Christopher Thnay, Secretary

MINUTES



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COMMISSION, CITY OF HAYWARD**

Council Chambers

Thursday, May 27, 2004, 7:30 P.M.

777 "B" Street, Hayward, CA 94541

Planning Commission

ATTEST:

Edith Looney
Commission Secretary

DRAFT